

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
SEP 12 2017
Clerk, U.S. District Court
District Of Montana
Missoula

BRIAN DOUGLAS SMITH,

Petitioner,

vs.

STATE OF MONTANA,

Respondent.

CV 17-109-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations in this case on August 16, 2017, denying Petitioner Brian D. Smith's ("Smith") Motion for Relief from Judgment. Smith timely filed objections and is therefore entitled to de novo review of the specified findings and recommendations to which he objects. 28 U.S.C. § 636(b)(1). The portions of the findings and recommendations not specifically objected to will be reviewed for clear error. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). For the reasons stated below, the Court adopts Judge Lynch's Findings and Recommendations in full.

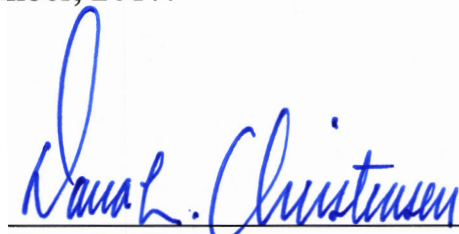
In his objections, Smith focuses on the same issue which formed the basis of his original petition: that the state district court lost jurisdiction by granting leave to file an information without first holding an adversarial hearing. Therefore, Smith reasserts that all subsequent proceedings are void. (Doc. 4 at 2.) Smith's objections fail to present any new evidence and reiterate the same facts and arguments already made and properly rejected by Judge Lynch.

Finally, the Court agrees with Judge Lynch's determination that there is no doubt about either the nature of Smith's claims or this Court's lack of jurisdiction to hear them. Thus, a certificate of appealability is not warranted.

Accordingly, IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 3) is ADOPTED IN FULL. Petitioner's Motion for Relief from Judgment is DENIED.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED this 12th day of September, 2017.



Dana L. Christensen, Chief Judge
United States District Court